instance relating back so as to remove any burdens imposed. It is difficult to distinguish in principle between a conveyance upon trust and an absolute conveyance, so that the doctrine of title passing without the assent of the grantee subject to disclaimer would seem to be perfectly applicable to both cases, thus attaining the practical benefit of the rule requiring assent without incurring its objectionable features.[11]

LIABILITY OF CORPORATION DIRECTORS FOR NEGLIGENCE. — It is well settled that directors of corporations are personally liable to the corporation for losses caused by their negligence, but there is a wide variance in the language used by the courts to define the degree of care imposed upon them. The cases which profess to set the most severe standard cite Hun *v.* Cary [1] to support the proposition that directors are bound to use the high degree of care which men prompted by self-interest generally exercise in their own affairs. Other cases, like a recent Kentucky decision, purport to adopt a milder rule, for which Spering's Appeal [2] is relied upon, namely, that directors are liable only for carelessness so gross as to be conclusive evidence of fraud. *Ebelhar* v. *German American Security Co.'s Assignee*, 91 S. W. Rep. 262.

Differing so widely in their statement of the director's duty, the two groups of cases seem at first sight to be in sharp conflict, but an examination of their facts shows that, in reality, they are governed by the same rule. The correct principle, and the one actually underlying the decisions, is that directors in any corporation must devote the amount of care to the business which ordinary men would give under the circumstances.[3] Hun *v.* Cary [1] was an action against the directors of a savings bank, and the defendants were held to a high degree of care. As savings banks solicit the business of small depositors who are seeking safety for their earnings rather than a high rate of interest, and as the men who act as directors of such institutions realize that the confidence reposed in them by the depositors puts them in a fiduciary position, the decision was in harmony with the principle stated above. So high a standard has not yet been applied to cases other than those involving savings banks, but it seems that the same reasoning would apply to the directors of modern life insurance companies. In Spering's Appeal the corporation was conducted merely for profit, and the duty of care actually required was slight. This decision, too, conforms to the correct principle. The directors of an ordinary corporation are men who have not time to watch the details of the corporate business and who frequently do not understand them. They are not expected to devote the same amount of attention to the business as savings bank directors. As to their acts of commission, all that the law requires is that they exercise an honest judgment on the questions coming before them. They are not responsible for mistakes of judgment, however foreseeable they may have been, nor do they guarantee the possession in themselves of skill and business acumen.[4] When loss results because of their omissions, such as failure to detect dishonest employees, they are ordi-

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[11] See 14 HARV. L. REV. 456; Tiffany Real Property, § 407.

[1] 82 N. Y. 65.
[2] 71 Pa. St. 11.
[3] Briggs *v.* Spaulding, 141 U. S. 132.
[4] Witters *v.* Sowles, 31 Fed. Rep. 1.

narily not liable if they have used reasonable care in appointing officers, instituting systems of reports, and investigating the things that come under their observation.[5] They are justified in leaving the management to subordinates and they need not watch details.

As what is due care varies, therefore, with the circumstances of each case, it is impossible to formulate general rules which will cover all states of fact, but the tendency is toward a low standard except in a restricted class of cases.[6] Inasmuch as the directors are usually stockholders and interested in the enterprise, the corporation seldom suffers because of the leniency of the law; on the other hand a harsher rule would directly injure the corporation by making desirable men unwilling to serve.

ESTOPPEL AS TO PART OF A TRANSACTION. — It is probable that estoppel by conduct, rightly termed "equitable estoppel," had its beginnings in an injunction against the pleading of facts which it would be unconscionable to assert.[1] The doctrine, as often stated, is that when one person has made assertions, which he as a reasonable man should know will be acted upon and should know are false, to another who so acts upon them that the denial of their truth would cause him loss, the former is estopped from maintaining their falsity.[2] The rule, however, as thus stated, needs to be applied with caution. If A has changed his position upon the faith of B's misrepresentation, B should not be permitted to withdraw his words so as to rob A of the advantage he counted upon as arising from the change.[3] But unqualifiedly to estop him from proving the truth may often result in compelling him to assume losses incurred before his duty to speak the truth arose. This is to lose sight of the equitable nature of the proceeding. For example, A is bitten by a dog which B represents is his. When, however, A has brought action against him in tort he denies his ownership. A did not upon B's representation alter his relation to the original cause of action or to the actual wrongdoer, but with respect to a new matter, the costs of his suit. Hence the estoppel should go no further than to saddle B with those costs, as an injunction against pleading the truth should certainly be conditional upon their non-payment.[4] Similar principles apply where A discounts a bill with B's name forged upon it, and after he has paid part of the proceeds is told by B that the signature is genuine. In most jurisdictions there can be no ratification of a forgery. There may, however, be an estoppel, but this should extend only to what was done under the influence of B's representations.[5] Of course if B's representa-

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5 Brannin *v.* Loving, 82 Ky. 370.

6 See The North Hudson, etc., Ass'n *v.* Childs, 82 Wis. 460.

1 See Horn *v.* Cole, 51 N. H. 287; 2 Pomeroy, Eq. Jurisp. 3d. ed., § 802.

2 Horn *v.* Cole, *supra*; Pickard *v.* Sears, 6 Ad. & E. 469.

3 Tobey *v.* Chipman, 13 Allen (Mass.) 123; Grissler *v.* Powers, 81 N. Y. 57, distinguishing Payne *v.* Burnham, 62 N. Y. 69.

4 See Eikenberry *v.* Edwards, 67 Ia. 14; Phillipsburgh Bank *v.* Fulmer, 31 N. J. Law 52; *contra*, Robb *v.* Shephard, 50 Mich. 189; Stables *v.* Eley, 1. C. & P. 614, overruled in Smith *v.* Bailey, [1891] 2 Q. B. 403.

5 Merrill *v.* Tyler, Seld. Notes (N. Y.); Bryce *v.* Clark, 16 N. Y. Supp 854; see DeMoss *v.* Economy, etc., Co., 74 Mo. App. 117; *contra*, Ewing *v.* Dominion Bank, 35 Can. L. Rep. 133, criticised in 19 HARV. L. REV. 113.